

REMARKS

Claims 1-3, 8-21, 24, and 25 are presented for the Examiner's review and consideration. In this Response, Applicant has amended claim 24. Applicant believes that the claim amendment and the accompanying remarks serve to clarify the present invention and are independent of patentability. Accordingly, Applicant respectfully submits that they do not limit the range of any permissible equivalents.

35 U.S.C. § 103

Claims 1-3 and 8-21 were rejected under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent No. 5,540,718 to Bartlett ("Bartlett") in view of U.S. Patent No. 4,235,238 to Ogiu et al. ("Ogiu"). For the reasons set forth below, Applicant respectfully submits that the rejected claims are patentable over Bartlett in view of Ogiu.

The Examiner stated that Bartlett discloses the claimed device except for one of the passages being formed partially in the body portion and partially in the pointed end portion. The Examiner specifically stated that Ogiu teaches a tissue suturing apparatus with a passage used for threading suture that is formed partially in the body portion 1 and partially in the pointed end portion 3 (Figure 51).

Referring to Figure 51 of Ogiu, a needle 3 and tubular member 1 is shown, where the needle is positioned through tissues 2 and 2a. As shown in Figure 45, the needle 3 and tubular member 1 include a passage 5 therethrough, having a receiving chamber 6 and lateral opening at the end of the needle 3 through which the suture 9 and intermediate stop 74 is inserted into the body. The intermediate stop 74 include only a single bore (passage) 75 through which the suture is threaded.

As such, Ogiu disclose a suture/stop insertion instrument having a tubular member and needle with a passage therethrough. The needle portion of the suture/stop insertion instrument includes a lateral opening through which the suture and stop are inserted in the body to stitch the tissues together. The stop is only disclosed as having a single bore therethrough.

However, Ogiu does not disclose a device for securing a suture relative to a body tissue, namely, a suture stop having a pointed end portion and a passage partially in the pointed end portion for the threading of suture. The stop of Ogiu is only disclosed as having a single passage substantially through the center thereof. Furthermore, the insertion instrument, namely, the tubular member and needle, is not a device for securing a suture relative to a body tissue, but is in fact a device for inserting the device securing a suture relative to a body tissue, namely the stop.

In contrast and as discussed in the previous Response to Office Action, Bartlett discloses that anchors could have potential cross-sectional bores including oblong, elliptical, tear-drop, and figure eight (thereby providing separate bores for the suture and the insertion tool.) (Col. 5, lns. 34-37). Suture 64 may be threaded through bore 34 of the suture anchor in any preferred manner such as those illustrated in FIGS. 6-8. (Col. 6, lns. 35-37).

Additionally, as shown in FIG. 9 of Bartlett, suture anchor 20 is mounted on insertion end 44 of insertion tool 40, and suture 64 is threaded through bore 34. (Col. 7, lns. 7-9). Insertion end 44 enters bore 34 adjacent trailing edge 32 of suture anchor 20 and exits (if at all) adjacent leading edge 30. (Col. 7, lns. 9-11). Leading edge 30 of suture anchor 20 is positioned to be the first portion of suture anchor 20 to enter patient bone hole 70. (Col. 7, lns. 14-19). The patient bone hole 70 having already been drilled into patient bone 72. (Col. 6, lns. 64-65).

As such, Bartlett, discloses an anchor including a single bore for threading a suture therethrough. The anchor is mounted to an insertion tool, for insertion of the anchor into a pre-drilled bone hole. The insertion tool includes an insertion end on which the anchor is mounted.

Accordingly Applicant submits that there is no suggestion, motivation, teaching in either Bartlett or Ogiu to combine the references. Bartlett discloses a bone anchor which is inserted into a predrilled bone hole with an insertion instrument on which the anchor is mounted. The bone anchor is used to secure the suture to the bone. In contrast, Ogiu discloses a suture stop which is inserted into the body through a passage in a tubular member, having a needle portion, namely the insertion instrument. The needle portion of Ogiu is used to penetrate the tissue to stitch the suture through the tissue.

As such, Bartlett and Ogiu are intended for different purposes and using different

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mechanisms. Additionally, the combination of Bartlett and Ogiu would require undue experimentation in that it is not apparent how the two references would be combined.

Furthermore, even if combined as suggested, Bartlett and Ogiu would not disclose the claimed invention. Specifically, both Bartlett and Ogiu disclose a suture anchor/stop which has a single bore for threading a suture therethrough. As such, the combination of Bartlett and Ogiu would only disclose a device for securing a suture relative to a body tissue having a single passage for the threading of suture therethrough. The combination of Bartlett and Ogiu would not disclose a device for securing a suture relative to a body tissue having a first and second passage, where at least one of the passages is formed partially through the body and partially through the pointed end portion of the device.

Additionally, an insertion instruments is not claimed in the present Application and as such the insertion instruments of Bartlett and Ogiu are not relevant to the patentable of the claims of the present Application.

In light of the foregoing, claims 1, 9, and 21 are respectfully submitted to be patentable over Bartlett in view of Ogiu. As claims 2, 3, and 8 depend from claim 1 and claims 10-20 depend from claim 21, and necessarily include all the elements of their base claims, Applicant respectfully submits that these dependent claims are also patentable at least for the same reasons.

Claims 24 and 25 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Bartlett in view of Ogiu and in further view of U.S. Patent No. 6,368,343 to Bonutti et al. (“Bonutti”).

As Applicant’s Attorney discussed with Examiner Yabut on March 23, 2007, and as previously noted in the Response filed on November 1, 2006, the present Application claims priority to Bonutti. As a result, Bonutti does not qualify as prior art. Accordingly, Applicant requests the withdrawal of the rejection of claims 24 and 25.

Claim 24 has been rewritten in independent form to include all of the recitations of its base claim and any intervening claims. Accordingly, Applicant respectfully submits that claims 24 and 25 are in condition of allowance. Furthermore, Applicant requests that the finality of the Office

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Action be withdrawn.

Conclusion

In light of the foregoing remarks, this application is now in condition for allowance and early passage of this case to issue is respectfully requested. If any questions remain regarding this amendment or the application in general, a telephone call to the undersigned would be appreciated since this should expedite the prosecution of the application for all concerned.

No fee is believed due. However, please charge the required fee (or credit any overpayments of fees) to the Deposit Account of the undersigned, Account No. 503410 (Docket No. 782-A03-003-1).

Respectfully submitted,



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